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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

-----X
MICHELE MAZUR, individually and for all :
others similarly situated, :

Plaintiff, :

-against- :

EBAY, INC., HOT JEWELRY :
AUCTIONS.COM d/b/a JEWELRY :
OVERSTOCK AUCTIONS, HOT JEWELRY :
AUCTIONS.COM d/b/a PARAMOUNT :
AUCTIONS, and DOES 1-100, inclusive :

Defendant. :
-----X

Case No. 3:07-cv-03967-MHP

JOINT CASE MANAGEMENT
STATEMENT OF PLAINTIFFS
AND DEFENDANT EBAY
[PROPOSED] ORDER

1 The parties to the above-titled action jointly submit this Case Management
2 Statement and Proposed Order and respectfully request that the Court issue an appropriate Case
3 Management Order.

4 **1. JURISDICTION AND SERVICE**

5 eBay acknowledges that jurisdiction in the Northern District of California is
6 appropriate; however, eBay believes that the current assignment of the case to the San Francisco
7 Division is inappropriate under the Local Civil Rules. Venue in this action is based on Defendant
8 eBay's residence within the Northern District. (Complaint, ¶¶ 8, 10.) eBay's principal place of
9 business is 2145 Hamilton Avenue, San Jose, Santa Clara County, California 95125. Civil Local
10 Rule 3-2(e) provides that civil actions which arise in Santa Clara county shall be assigned to the
11 San Jose Division within the Northern District. Accordingly, eBay requests an intra-district
12 transfer from the San Francisco Division to the San Jose Division. If the Court wishes, eBay will
13 submit a formal motion requesting transfer.

14 **2. FACTS**

15 **A. Brief Description of the Parties Involved**

16 Plaintiffs Michel Mazur ("Plaintiff" or "Mazur") and the class of others similarly
17 situated (the "Class" or "Class Members") are individuals who have participated in a series of
18 eBay Live Auctions operated by and through Hot Jewelry Auctions.com

19 Defendant eBay, Inc. ("eBay") is the world's largest online auction operated and is
20 a Delaware corporation with a principal place of business at 2145 Hamilton Avenue, San Jose,
21 California 95125. According to the quarterly report that eBay filed with the Securities and
22 Exchange Commission on July 27, 2007, eBay earned roughly \$3.6 billion in net revenues during
23 the first half of 2007, and has approximately 83 million active users, and over 241 million
24 confirmed registered users.

25 Defendant Hot Jewelry Auctions.com ("HJA") is a business entity of unknown
26 organization, located at 2057 South Atlantic Boulevard, Los Angeles, California 90040. HJA
27 operates Internet jewelry auctions using eBay Live Auctions.

28 The true names and capacities (whether individual, corporate, associate, or

1 otherwise) of Defendants Does 1 through 100, inclusive, are unknown to Plaintiff. Therefore,
2 Plaintiff sues those Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474.
3 Plaintiff further alleges that each fictitious Defendant is in some manner responsible for the acts
4 and occurrences alleged herein. Plaintiff will seek leave of this Court to amend this Complaint to
5 state the real names and capacities of said fictitiously named Defendants when the same have
6 been ascertained. Plaintiff is informed and believes, and on that basis alleges, that the factiously
7 named Defendants proximately caused her damages.

8 **B. Overview of Plaintiff's Allegations**

9 Plaintiff, individually and on behalf of all other Class Members, brings this class
10 action against Defendants eBay and HJA (collectively "Defendants") for misconduct arising out
11 of a series of "live" online auctions conducted by HJA through an online bidding platform that
12 was established by eBay. Specifically, Plaintiff alleges that HJA has been systematically
13 defrauding Class Members in a fake or "shill" bidding operation made possible by the gross
14 misconduct and negligence of eBay and, accordingly, that Class Members have been fraudulently
15 induced to pay artificially inflated prices for otherwise less valuable merchandise. eBay disputes
16 all substantive allegations made against it in the Complaint and as described below.

17 At the turn of the 21st century, eBay launched a new online auction platform
18 known as eBay Live Auctions. These auctions differ from the regular eBay auctions in several
19 ways. In ordinary eBay auctions, sellers list items for sale that only registered eBay members may
20 bid on using the www.ebay.com website. The bidding period typically lasts anywhere from a few
21 hours to several days. By contrast, eBay Live Auctions allows registered eBay members to
22 participate in live auctions being held on the floors of auction houses throughout the world. The
23 appeal is that registered eBay users can compete—through the Internet—with non-registered
24 eBay users who are placing live bids at authentic, old-fashioned auctions.

25 Plaintiff alleges that eBay expressly and impliedly vouches for the integrity of
26 these live auctions when, in fact, eBay knowingly facilitates hundreds of auctions managed by
27 HJA that exist only to increase the price that Class Members pay for goods. Specifically, Plaintiff
28 alleges that eBay asserts that these live auctions are "very safe," that "all live auctions are run by

1 reputable international auction houses, which are carefully screened by eBay,” and that “floor
2 bidders” place their bids offline (not using the Internet). Instead, Plaintiff alleges, these auctions
3 are marred by shill bidding and are maintained on no auction house floor.

4 As a result of Defendants’ misconduct, Plaintiff further alleges that, by
5 participating in the sale of junk jewelry at artificially inflated prices, HJA and eBay reap
6 inordinate profits, while unsuspecting Class Members are scammed out of millions of dollars.
7 HJA is unjustly enriched by charging higher prices than it otherwise could in the absence of this
8 fraud. Moreover, because eBay’s receives as compensation a percentage of the sale price of every
9 item sold, eBay is unjustly enriched by earning artificially elevated commissions.

10 3. LEGAL ISSUES AND MOTIONS

11 In the course of the aforementioned activity, Plaintiff alleges that (a) Defendants
12 have violated numerous statutes; (b) Defendant eBay is guilty of breach of contract, unjust
13 enrichment, negligence, and negligence per se; and (c) Defendant HJA is guilty of breach of
14 contract and unjust enrichment.

15 eBay will move to dismiss each of the causes of action asserted against it based on
16 complete immunity under the Communications Decency Act, 47 U.S.C. § 230, based on
17 Plaintiff’s release of liability in the contract between eBay and Plaintiff, and because Plaintiff has
18 failed to state a claim.

19 4. AMENDMENT OF THE PLEADINGS

20 Plaintiff might or might not amend its pleadings depending on the Court’s ruling
21 on eBay’s motion to dismiss.

22 5. EVIDENCE PRESERVATION

23 eBay has instituted evidence preservation practices with respect to evidence that is
24 potentially relevant in this action.

25 6. DISCLOSURES

26 The parties propose to revisit the timing for initial disclosures and the discovery
27 schedule at a later date following resolution of eBay’s motion to dismiss.

28 7. DISCOVERY

1 The parties propose to revisit the timing for initial disclosures and the discovery
2 schedule at a later date following resolution of eBay's motion to dismiss.

3 **8. CLASS ACTIONS**

4 Plaintiff expects to seek Class certification pursuant to Fed. R. Civ. P. 23 in or
5 around February 2008.

6 **9. RELIEF**

7 **A. Permanent Injunction**

8 Plaintiff seeks a permanent injunction enjoining Defendants from in any way
9 engaging in the practices set forth herein. Plaintiff further seeks a permanent injunction enjoining
10 Defendants from utilizing any monies acquired by Defendants' unfair business practices,
11 including all profits, revenues, and proceeds both direct and indirect. Additionally, Plaintiff seeks
12 also declaratory relief and as well as the imposition of a constructive trust upon all monies and
13 assets Defendants have acquired as a result of their unfair practices.

14 In addition to the aforementioned equitable remedies sought, Plaintiff, individually
15 and on behalf of the Class, seeks (a) compensatory damages and full restitution of all funds
16 acquired from Defendants' unfair business practices, including disgorgement of profits; (b) actual
17 damages suffered by Plaintiff and Class members; (c) trebling of all damages awarded under 18
18 U.S.C. § 1962(c); (d) punitive damages, to be awarded to Plaintiff and each Class member; (e) (k)
19 both pre- and post-judgment interest on any amounts awarded; and (f) and other such relief as the
20 Court may deem just and proper.

21 Plaintiffs also seek reimbursement for the costs of the suit herein, costs associated
22 with the investigation conducted prior to the commencement of this action, payment of
23 reasonable attorneys' fees, and such other relief as the Court may deem just and proper.

24 eBay denies the allegations of the Complaint and denies that Plaintiff is entitled to
25 the requested relief.

26 **10. SETTLEMENT AND ADR**

27 The parties agree to revisit discussions regarding settlement and/or mediation after
28 the disposition of eBay's motion to dismiss.

11. **CONSENT TO MAGISTRATE JUDGE**

The parties do not consent to having a magistrate judge conduct all proceedings including trial and entry of judgment.

12. **NARROWING OF THE ISSUES**

The parties have not identified any issues that can be narrowed.

13. **EXPEDITED SCHEDULE**

The parties do not believe this case is appropriate for an expedited schedule.

14. **SCHEDULING**

The parties propose to revisit the timing for scheduling expert discovery and pretrial issues, if necessary, at a later date following resolution of eBay's motion to dismiss.

15. **TRIAL**

The parties propose to revisit the timing for scheduling expert discovery and pretrial issues, if necessary, at a later date following resolution of eBay's motion to dismiss.

16. **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

eBay will file the necessary disclosure of interested entities or person contemporaneously with its first responsive pleading, due October 26, 2006.

Dated: October 22, 2007

COOLEY GODWARD KRONISH LLP

By: /s/ Whitty Somvichian
Whitty Somvichian

Attorney for Defendant
eBay, Inc. et al.

Dated: October 22, 2007

BALESTRIERE PLLC

By: /s/ Craig Stuart Lanza
Craig Stuart Lanza

Attorney for Plaintiffs
MICHELE MAZUR, individually and for all
others similarly situated

CASE MANAGEMENT ORDER

The Joint Case Management Statement and Proposed Order herein is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

IT IS SO ORDERED:

Dated: _____, 2007

THE HON. MARILYN HALL PATEL
United States District Court Judge